

John C. Cruden
Assistant Attorney General

Andrew “Guss” Guarino

Trial Attorney, Indian Resources Section
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
Office: (303) 844-1343 Fax: (303) 844-1350
E-mail: guss.guarino@usdoj.gov

David L. Negri

Trial Attorney, Natural Resources Section
c/o US Attorney’s Office
800 Park Blvd., Suite 600
Boise, Idaho 83712
Tel: (208) 334-1936; Fax: (208) 334-1414
E-mail: david.negri@usdoj.gov
Environment and Natural Resources Division
United States Department of Justice
Attorneys for the United States

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,)	IN EQUITY NO. C-125-RCJ
)	3:73-CV-00125-RCJ-WGC
Plaintiff,)	
)	
WALKER RIVER PAIUTE TRIBE,)	
)	UNITED STATES’ MOTION TO
Plaintiff-Intervenor,)	VACATE AUGUST 23, 2016 ORAL
vs.)	ARGUMENT
)	
WALKER RIVER IRRIGATION DISTRICT,)	
a corporation, et al.,)	
)	
Defendants.)	
_____)	

The United States of America (“United States”), through counsel designated to represent the United States in this proceeding, moves to vacate the oral argument currently scheduled for August 23, 2016 before the assigned Judge, Hon. Robert C. Jones (“Judge Jones”). The United States requests that oral argument on the *Verified Petition For Enforcement Of The Walker River Decree* (ECF No. 1395)

(“Verified Petition”) be rescheduled to a time after the *United States’ Motion to Recuse* (ECF No. 1414) has been resolved by another district court judge.

The paragraphs below are provided in support of this motion and constitute the memorandum of points and authorities as required by LPR 7-2.

1. On June 27, 2016, the United States Board of Water Commissioners and the Chief Deputy Water Commissioner (“Board of Water Commissioners”) filed their Verified Petition against the United States. The Verified Petition seeks to enjoin the United States from completing a federal project to restore the riparian habitat of a small section of the Walker River.
2. On July 22, 2016, the United States responded to the Verified Petition with its *Response to Verified Petition for Enforcement of the Walker River Decree* (ECF No. 1404).
3. On July 28, 2016, the Court issued *Order* (ECF No. 1409) and set oral argument on the Verified Petition before Judge Jones for August 23, 2016.
4. On August 9, 2016, the United States filed its *Motion to Recuse* (ECF No. 1414) (“Motion to Recuse”) and requested that Judge Jones be recused because of his bias against the United States in this case; a case involving the United States’ land and water management practices.
5. On August 9, 2016, the Board of Water Commissioners filed their *Reply to Oppositions to Petition for Enforcement of the Walker River Decree* (ECF No. 1416).
6. The United States’ Motion to Recuse invoked 28 U.S.C. § 144 as its basis for seeking recusal and, as required by the statute, the motion was timely filed and sufficiently supported by affidavit.
7. 28 U.S.C. § 144 expressly instructs that once the motion to recuse and affidavit have been filed, the judge who is the subject of the recusal request “shall proceed no further” in the case and that “another judge shall be assigned” to hear and decide the motion to recuse. Consistent with

the express language of the statute, the United States Supreme Court recognized long ago that the statute “permits an affidavit of personal bias or prejudice to be filed and upon filing, if it be accompanied by certificate of counsel, directs an immediate cessation of action by the judge whose bias or prejudice is averred, and in his stead, the designation of another judge.” *Berger v. United States*, 255 U.S. 22, 33 (1921).

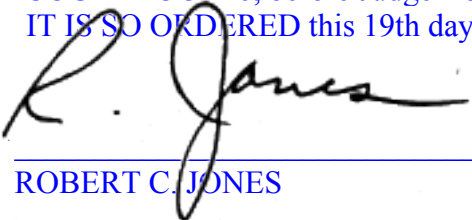
8. As of this date, no action has been taken on the Motion to Recuse: no hearing has been scheduled on the motion, no other judge has been assigned to address the motion, and no decision has been issued on the motion. At the same time, pursuant to the July 28th *Order*, oral argument on the Verified Petition remains scheduled for August 23, 2016 before Judge Jones.
9. With the Motion to Recuse pending, Judge Jones may not take action to address the merits of the Verified Petition. If Judge Jones held oral argument on the Verified Petition, the court would be “proceeding” with the case contrary to 28 U.S.C. § 144 and contrary to the Supreme Court’s admonition that such conduct should cease.
10. Until the Motion to Recuse has been resolved, Judge Jones should not preside over oral argument on the Verified Petition.

CONCLUSION

For the reasons articulated in the paragraphs above, the Court should vacate the oral argument currently scheduled for August 23, 2016. No oral argument on the Verified Petition should be held until a time after the Motion to Recuse has been properly resolved.

ORDER

IT IS HEREBY ORDERED that the Motion to Vacate Hearing (ECF #1419) is GRANTED.
IT IS FURTHER ORDERED that Oral Argument RE: Verified Petition for Enforcement of the Walker River Decree (ECF #1395) currently set for 10:00 A.M., Tuesday, August 23, 2016 is VACATED and RESCHEDULED to 10:00 AM, Wednesday, October 12, 2016, in RENO COURTROOM 6, before Judge Robert C. Jones.
IT IS SO ORDERED this 19th day of August, 2016.



ROBERT C. JONES